

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

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WENDALL JEFFERSON, pro'se

VS.

UNITED STATES OF AMERICA,

$$\left. \begin{array}{l}) \\) \\) \\) \\) \\) \\) \end{array} \right\}$$

CASE.NO 3:06 CV-00060-MHT

EDRA P. HACKETT, JR.
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA.

MOTION UNDER RULE 15 (c)(2)
"RELATION BACK OF AMENDMENTS."

Comes, now movant Wendall Jefferson, acting pro se, in the above style motion seeking this Honorable court request to relate back to the proceeding involving his counts for 924(c). Jefferson asserts that the issue he is raising arose from the conduct arising from his pleadings prior form sentencing, and also his direct appeal and 2255. Jefferson contends that had not the Probation Officer (PSI), misadvised the district judge about the defendant receiving a departure base^{on} substantial assistance under §5k1.1 for the 924(c) mandatory minimum. see Dkt. 5-4 pg. 10 at 20-25 and pg. 11 at 1-14, where presentence officer clearly states to the judge that the 5k1.1 motion does not effect the 924(c) to his knowledge. The District Judge did ask the government how does the assistance help the defendant, id. at Dkt 5-4, pg. 10 at 20-25. Jefferson contends had not the probation officer misadvised the sentencing Judge, the judge may have departed^{ed} the mandatory minimum sentences under 924(c).

Jefferson contends that the district ^{Court} have the right to depart from the mandatory minimum sentence based on motion filed by goverment under 5k1.1, is the judge discretion.

see, United States VS. Beckett 996 F2d 75 5th cir, "where prosecutor moved for downward departure under 5K1.1 for guideline, based on substantial assistance, the district court was authorized to depart below the statutory minimum sentence imposed by 18 U.S.C. 924(c), see also U.S. vs. Chavarria-Hernandez 15 F3d 1036 11th Cir 1994) "District court reduced sentence below mandatory minimum". The application of law to sentencing issues is subject to de novo review, see United States Vs. Robinson 935 F2d 201, 203, 11th Cir 1991. The Sentencing Judge in Jefferson case did have the right to depart below the statutory minimum sentence following a government motion pursuant to §5K1.1. see, United States VS. Pippen, 903 F2d 1478, 1485-86, (11th Cir 1990) (government has no control over the extent of departure after 5K1.1 motion).

Relief Granted


The Defendant ask this Honorable court to accept the above style motion and grant the argument at hand into pleading with the issues already in argument in light of Mayle VS. Felix 545 U.S. 644, 162 LED 2d 582 "entitling defendant to present new issues from the same conduct, transaction or occurrence".

WJ±MSML

CC: file

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RESPECTFULLY SUBMITTED,



WENDALL JEFFERSON 11199-002

U.S.P. ATLANTA

P.O. BOX 150160


Atlanta, Ga 30315

CERTIFICATE OF SERVICE

I hereby certfy that a true and exact copy of the instant motion was served on the U.S. Attorneys Office,Box 197,Montgomery,AL 36101, on this 8th ,day of November,07,by handing the said documet over to the pison officials here at USP Atlanta,P.O.Box 150160, Atlanta,Ga 30315,with first class postage prepaid in full and addressed correctly herein.

wj/msml
cc:FILE

RESPECTFULLY SUBMITTED


WENDALL JEFFERSON 11199-002
USP-Atlanta
P.O.Box 150160
Atlanta,Ga 30315



Wendell Jefferson 11199-002
P.O. Box 150160
Atlanta, GA 30315
UNITED STATES Penitentiary

United States District Court
P.O. Box 711
Montgomery, AL 36101

"Legal Mail"